

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

**MISSOURI PRIMATE FOUNDATION,  
et al.,**

**Plaintiffs and  
Counterclaim Defendants,**

**v.**

**PEOPLE FOR THE ETHICAL  
TREATMENT OF ANIMALS, INC., et al.,**

**Defendants and  
Counterclaim Plaintiffs.**

**Case No. 4:16-cv-02163**

**COUNTERCLAIM PLAINTIFFS' STATEMENT OF UNCONTROVERTED  
MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT  
AGAINST COUNTERCLAIM DEFENDANT ANDREW SAWYER**

Pursuant to Federal Rule of Civil Procedure 56(c)(1) and Local Rule 7-4.01(E), Counterclaim Plaintiffs People for the Ethical Treatment of Animals, Inc. and Angela Scott (together, "Plaintiffs"), file their statement of uncontroverted material facts, as established by the citations to the record identified below.

**Background and Procedural History**

1. From at least 2015 through the present, Andrew Sawyer ("Sawyer") was and is the legal owner of the chimpanzee named Joey. Factual Inference No. 1 (as proposed by Counterclaim Plaintiffs in ECF No. 123 and entered by the Court in ECF No. 132).

2. From July 8, 2013 through December 26, 2016, Sawyer boarded Joey at facilities operated by Connie Braun Casey ("Casey"), also known as the Missouri Primate Foundation ("MPF"). *See* Declaration of Jared Goodman In Support of Counterclaim Plaintiff's Motion for Summary Judgment against Counterclaim Defendant Andrew Sawyer ("Goodman Decl."), Ex. F. (CASEY-

00321).

3. During some period of time while Joey was boarded at MPF, Sawyer “flew in every two weeks and stayed two weeks taking care of Joey.” Goodman Decl., Ex. P (Deposition of Connie Casey (“Casey Dep.”) 179:12-15).

4. In November 2016, Sawyer received Plaintiffs’ notice of intent to sue letter (“Notice”). Factual Inference No. 3.

5. When Sawyer received the Notice, he understood that Plaintiffs intended to sue him in order to determine that the conditions in which Joey was held were in violation of the Endangered Species Act. Factual Inference No. 4.

6. Sometime after receiving the Notice, Sawyer visited MPF for several days. Casey Dep. 179:12-22.

7. To preclude Plaintiffs from accessing potentially incriminating evidence for use in this proceeding, Sawyer decided to remove Joey from MPF to an unknown location. Factual Inference No. 56.

8. On December 26, 2016, while Casey was absent from MPF, Sawyer and Joey left. Casey Dep. 178:7-14; Goodman Decl., Ex. F.

9. “The current whereabouts and condition of Joey are not known” by Plaintiffs. ECF No. 132, at 5.

10. The Court did “not order Sawyer to produce Joey,” but instead agreed to draw the adverse factual inferences proposed by Plaintiffs in ECF No. 123 and entered by the Court in ECF No. 132.

## **The Social Needs of Chimpanzees**

11. Chimpanzees are highly social, complex, and intelligent animals. Goodman Decl., Ex. M (Gwendolen Reyes-Illg, D.V.M., Expert Report on the Chimpanzee Joey, 8 (Feb. 14, 2019) [hereinafter Reyes-Illg Joey Report]); Goodman Decl., Ex. N (Mary Lee Jensvold, Ph.D., Expert Report on the Chimpanzee “Joey,” 10 (Feb. 13, 2019) [hereinafter Jensvold Joey Report]); ECF Nos. 31 and 151, ¶ 3.

12. In the wild, chimpanzees live in groups of 20-200 individuals. Jensvold Joey Report, 10.

13. In the wild, chimpanzees engage in social interactions throughout life, and social interaction and stimulation are essential for a chimpanzee’s development, health, and wellbeing. Jensvold Joey Report, 11.

14. Chimpanzees are rarely by themselves in the wild, and male chimpanzees appear especially social and are almost always in the company of other chimpanzees. Goodman Decl., Ex. O (Stephen Ross, Ph.D., Expert Report on the Chimpanzee “Joey,” 10-11 (Feb. 12, 2019) [hereinafter Ross Joey Report]).

15. A juvenile chimpanzee in the wild would be unlikely to ever find him or herself alone and isolated from other chimpanzees, not even for a few moments. Reyes-Illg Joey Report, 8.

16. Social interactions are crucial to primates and the adverse effects of social isolation are well known. Reyes-Illg Joey Report, 8.

17. When social interaction and stimulation is missing or inadequate in captivity, the animal will likely suffer harm. Jensvold Joey Report, 11.

18. The psychological harm done by housing chimpanzees in isolation is well-documented by nearly 50 years of research and can be loosely classified as learning impairment, abnormal behaviors, and mental illness. Reyes-Illg Joey Report, 10.

19. The effects of individual housing are so pronounced that their effects can be seen even after relatively short-term isolation. Ross Joey Report, 11.

20. Social isolation of most primates is known to cause abnormal behaviors, whether the animal is an infant, juvenile, or adult. Reyes-Illg Joey Report, 11.

21. Psychological trauma caused by social isolation can lead to behavioral clusters similar to the human psychiatric conditions of post-traumatic stress disorder (PTSD) and depression in their key diagnostic criteria. Reyes-Illg Joey Report, 12.

22. In addition to the behavioral and psychological harm that is caused by social isolation, harmful physical and physiological changes have also been observed in both juvenile and adult chimpanzees deprived of social contact with other chimpanzees. Reyes-Illg Joey Report, 13.

23. The harm caused by social isolation is also reflected in physical changes in a chimpanzee's brain. Jensvold Joey Report, 12.

24. Social isolation has been shown to alter metabolism to create a negative phosphorus balance and weight loss in adult chimpanzees, and impaired brain development in infant/juvenile nonhuman primates. Reyes-Illg Joey Report, 13.

25. Every available standard regarding chimpanzee care mandates social housing unless there exists a documented, veterinarian-mandated medical or behavioral reason why *temporary* isolation is necessary. Reyes-Illg Joey Report, 14.

26. Given the highly social nature of chimpanzees, housing them individually has harmful consequences and these consequences will likely be long-lasting. Ross Joey Report, 10.

27. Human companionship and rearing are no substitute for the presence of, and interactions with, other chimpanzees. Ross Joey Report, 13.

28. The solitary housing of a chimpanzee is a practice that is widely considered harmful and therefore unacceptable and inappropriate. Ross Joey Report, 15.

29. Housing a chimpanzee by him- or herself falls below acceptable minimum industry standards. Jensvold Joey Report, 13. Since these standards are considered the “minimum” necessary to safeguard the wellbeing of captive chimpanzees, facilities that fall below them expose their animals to a foreseeable risk of harm. *Id.*; *see also* Ross Joey Report, 14.

### **Joey’s Isolated Social Housing Conditions**

30. While at MPF, Joey was housed in an enclosure by himself. Factual Inference No. 5; Goodman Decl., Ex. Q (Deposition Transcript of Douglas Pernikoff, DVM (“Pernikoff Dep.”) at 82:13-15); Goodman Decl., Ex. H (PETA-00699, 700).

31. Casey stated that “we just opted to make it easy and keep [Joey] by himself.” Goodman Decl., Ex. H (PETA-00700).

32. While at MPF, Joey did not have an adequate opportunity to engage in social relations with other chimpanzees. Factual Inference No. 6. *See also* Goodman Decl., Exs. H (PETA-00740, 741), I (PETA-000816, 817), G (PETA-00846), J (PETA-00865-868, 880, 884).

33. Presently, Joey is not held in an adequate social group. Factual Inference No. 7.

34. Presently, Joey does not have an adequate opportunity to engage in social relations with other chimpanzees. Factual Inference No. 9.

35. Dr. Pernikoff, the purported attending veterinarian at MPF according to Casey, was not aware of any medical or scientific justification for keeping Joey in isolation. Pernikoff Dep. 96:9-15.

36. No veterinary records have been provided by Casey or Sawyer that would establish any medical or scientific justification for keeping Joey in solitary housing. Reyes-Illg Joey Report, 15.

### **The Harm Caused by Joey's Isolated Social Housing Conditions**

37. The failure to provide Joey with appropriate social grouping has harmed him and subjects him to a continuing likelihood of injury. Reyes-Illg Joey Report, Opinion 1.

38. The failure to provide Joey with adequate and appropriate social contact has harmed him, and is likely to cause him psychological, emotional, and physical injury. Reyes-Illg Joey Report, 15.

39. Joey suffered wide-ranging harms as a result of his confinement in isolation while housed at MPF, as well as presently. Jensvold Joey Report, 12.

40. The solitary housing in which Joey has been, and is being, kept, is likely to cause Joey harm in the form of short- and long-term psychological distress. Ross Joey Report, 10.

41. The solitary housing in which Joey has been, and is being, kept, creates (and created) the likelihood of injury to Joey by significantly disrupting Joey's normal behavioral repertoire in a manner likely to result in psychological injury. Ross Joey Report, 10.

42. The solitary housing in which Joey has been, and is being, kept, is also likely to result in future harms to Joey by disrupting his cognitive and behavioral development and thus limiting his ability to develop critical psychological functioning to maintain social relationships. Ross Joey Report, 13-14.

43. Without other chimpanzees with whom to socialize in an adequate and meaningful way, Joey is deprived the opportunity to appropriately interact with, learn from, and engage with

others of his own species, all of which are essential components of the natural behavior patterns of chimpanzees. Ross Joey Report, 10.

44. At this stage in his life, a male of Joey's age would be expected to begin his ascent in the dominance hierarchy of the group by dominating females and by navigating and challenging relationships with other males, building alliances and coalitions, and experiencing the accompanying relationships, dramas, and politics of his chimpanzee family, peers, and community—natural behaviors of which Joey is being deprived. Jensvold Joey Report, 12.

45. As a result of housing Joey by himself, he is deprived of the social experience and opportunities to engage in natural behaviors that are essential for his development and wellbeing. Jensvold Joey Report, 12.

46. Joey suffers from a lack of social stimulation and stunted psychological development. Jensvold Joey Report, 12.

47. If Joey remains physically isolated from other chimpanzees, he will never learn how to engage in species-specific behaviors that are essential for psychological and physiological wellbeing. Jensvold Joey Report, 12.

48. From videos taken while Joey was at MPF, it appears that Joey already developed abnormal behaviors as a result of this deprivation. These behaviors demonstrate psychological harm likely caused by his inability to engage in appropriate social contact. Reyes-Illg Joey Report, 15; Goodman Decl., Exs. H (PETA-00739), J (865, 867, 868, 880, 884).

49. The harmful effects of the isolated conditions in which he was, and presently is, kept are likely to be expressed and even exacerbated in the future, if they remain unabated. Ross Joey Report, 15.

50. The longer Joey's social isolation and solitary housing persist, the more difficult rehabilitation and resocialization will be. Reyes-Illg Joey Report, 16.

### **Chimpanzees' Needs for Appropriate Space**

51. A key factor that may influence chimpanzee wellbeing is the physical space they occupy on a daily basis. Ross Joey Report, 16.

52. There is a demonstrable link between the characteristics of the space in which a chimpanzee is confined and his or her species-typical behavior and wellbeing. Ross Joey Report, 16.

53. Space requirements were at the center of deliberations about "ethologically appropriate environments" ("EAE") as defined by the National Institutes of Health's Council of Councils Working Group on the Use of Chimpanzees in NIH-supported Research. From reviewing the literature on space use in captive chimpanzees, and after extensive discussion with global chimpanzee experts, the group recommended a minimum density of 1000 ft<sup>2</sup> (304.8 m<sup>2</sup>) per individual. Ross Joey Report, 16.

54. The Association of Zoos and Aquariums ("AZA") Chimpanzee Care Manual defines the appropriate space for chimpanzees as being *at least* 185.8 m<sup>2</sup> (2000 ft.<sup>2</sup>), with useable vertical heights of over 6.1 m (20 ft.). Ross Joey Report, 16.

55. Chimpanzees are an arboreal species, meaning they live off the ground, and are natural climbers. They live in the forest and walk on the ground, but spend more time in the trees. Jensvold Joey Report, 15.

56. Chimpanzees in the wild climb hundreds of feet in the air, and captive chimpanzees regularly seek out the highest accessible point in their enclosure to survey the nearby landscape. Ross Joey Report, 19.



57. Chimpanzees in captivity need physical furnishings and conditions to allow for species-typical behaviors suitable to this arboreal species, such as climbing and building nests off the ground. When such furnishings and conditions are lacking, the captive chimpanzee will likely suffer physiological harm. Jensvold Joey Report, 15.

58. Outdoor areas, in particular, confer complexity in ways that are difficult to replicate in controlled, indoor spaces. Jensvold Joey Report, 19.

59. Outdoor access is necessary for the long-term well-being of chimpanzees. Reyes-Illg Joey Report, 18; *see also* Jensvold Joey Report, 19.

60. In behavioral research studies, chimpanzees with outdoor access showed significantly less abnormal behavior compared with chimpanzees kept exclusively indoors. Reyes-Illg Joey Report, 18.

61. Research has shown that adult captive chimpanzees develop vitamin D deficiency when housed exclusively indoors without regular access to unfiltered sunlight. Reyes-Illg Joey Report, 18.

62. All of these components—properly constructed facilities, sufficient environmental enrichment, and outdoor access—are important to providing an appropriate and enriching environment, which is essential to maintaining physical and psychological health and welfare in chimpanzees. Reyes-Illg Joey Report, 18-19.

63. An environment that is deficient structurally or in terms of environmental enrichment can also contribute to development of physical ailments and/or premature decline. Reyes-Illg Joey Report, 19.

### **The Inadequate Spaces in Which Joey Was and Is Kept**

64. At MPF, Joey's minimum needs for space were not met. Factual Inference No. 11.

65. At his current undisclosed location, Joey still is not provided with adequate and appropriate space. Factual Inference No. 16.

66. During the time Joey was at MPF, the manner in which Joey was held failed to meet his basic physiological needs. Factual Inference No. 22

67. Presently, the manner in which Joey is being held fails to meet his basic physiological needs. Factual Inference No. 24.

68. The enclosure in which Joey was kept at MPF had no appropriate climbing structures and few climbable surfaces of any kind. Jensvold Joey Report, 15.

69. The walls and ceiling of Joey's enclosure at MPF were approximately 10 ft. high at the very most and mostly solid, so they were unsuited for climbing. Jensvold Joey Report, 15; Reyes-Illg Joey Report, 16.

70. Because Joey lacked sufficient access to spaces off the floor (e.g., platforms, ledges, ropes), he lacked adequate opportunities to express species-typical behaviors of climbing, clinging, brachiating, jumping, leaping, and hanging, which is essential to promote his physiological health. Jensvold Joey Report, 15.

71. Joey's only options for "travel" at MPF were largely on the floor or on a narrow window ledge. Jensvold Joey Report, 15.

72. At MPF, Joey appears to have had regular access to one or two rooms, but neither room appears to have accessed the outdoors. Reyes-Illg Joey Report, 16; Goodman Decl., Exs. H (PETA-00699), J (PETA-00865).

73. Currently, Joey does not have regular and sufficient outdoor access. Factual Inference No. 15.

### **The Harm Caused to Joey by Being Kept In an Inadequate Space**

74. The failure to provide Joey with adequate and appropriate space creates the likelihood of harm by disrupting Joey's normal behavioral repertoire. Ross Joey Report, 17.

75. At MPF, limiting Joey to an area in which he can only climb 9-10 feet restricted his ability to engage in normal behavior patterns of climbing, clinging, brachiating, jumping, leaping, and hanging Ross Joey Report, 19.

76. The failure to provide Joey with adequate and appropriate space in the future is also likely to result in future harms because of the limitations it puts on Joey's physical development. Ross Joey Report, 17.

77. A growing chimpanzee like Joey would need adequate physiological stimulation for proper development of muscles and bone strength. Jensvold Joey Report, 15.

78. Depriving Joey of sufficient appropriate opportunities for species-typical locomotion and postural behaviors put (and puts) Joey at risk of suffering lasting deficits. Jensvold Joey Report, 15.

79. Joey likely suffered deficits as a result of his inadequate physiological stimulation while he was housed at MPF and he is still in a limited space that continues to stunt (and therefore harm) his physiological development. Jensvold Joey Report, 16.

80. It is likely Joey is suffering physiological harm. Even if this has not yet caused irreversible harm to Joey, it will likely do so in the future if it continues unabated. Jensvold Joey Report, 16.

### **Chimpanzees' Need for Environmental Enrichment**

81. To ensure adequate physical and psychological health and welfare in captivity, chimpanzees require an appropriate environment, not merely in terms of space, complexity, and

ambient environmental conditions, but also in terms of sufficient “enrichment,” or elements added to the environment to stimulate the animal in various ways. Reyes-Illg Joey Report, 17.

82. In captive chimpanzees, a program of environmental enrichment is critical to provide essential cognitive and physical stimulation, opportunities for psychological development, and opportunities to conduct species-typical behaviors. Jensvold Joey Report, 18.

83. Enrichment is now widely viewed as a critical component of any effective animal care program designed to maximize animal welfare through a wide variety of strategies, whose absence carries severe consequences to the welfare of the captive animals. Ross Joey Report, 21.

84. In order to be effective, an enrichment plan must be based on current information in biology, and must include goal-setting, planning, implementation, documentation, evaluation, and subsequent program refinement. Ross Joey Report, 21.

85. In order to serve their intended purpose, programs of enrichment must include a large number of objects and opportunities, and they must be varied. Chimpanzees should receive 10-20 different objects daily. Jensvold Joey Report, 18.

86. In 1985, the Animal Welfare Act (“AWA”) was amended to mandate the promotion of the psychological well-being of primates in captivity. Food Security Act of 1985, Pub.L. No. 99-198, § 1752, 99 Stat. 1645 (1985) (codified as amended at 7 U.S.C. § 2143(a)(2)(B)).

87. The concept of “psychological well-being” has been recognized to be a mental state that is distinct from an animal’s environment, behavioral profile, and physiologic state. Nat’l Research Council, Comm. on Well-Being of Nonhuman Primates, *The Psychological Well-Being of Nonhuman Primates*, 10-12 (1998), *available at* <https://www.nap.edu/read/4909/chapter/1>.

88. Environmental enrichment or enhancement functions to stimulate the animal, prevent boredom, and provide opportunities to engage in natural behaviors. Reyes-Illg Joey Report, 18.

89. Psychological well-being entails that the animal is able to cope with day-to-day changes in the environment and does not experience chronic distress or engage in self-injury. Reyes-Illg Joey Report, 17.

90. The U.S. Department of Agriculture (“USDA”), Global Federal of Animal Sanctuaries, and AZA each set minimum requirements for the provision of enrichment. Jensvold Joey Report, 19.

91. The USDA requires a plan and implementation of the plan, and it must be in accordance with accepted professional standards. 9 C.F.R. § 3.81. Jensvold Joey Report, 19.

92. A written “Environmental Enrichment Plan” is recognized as a key component of creating an appropriate environment for chimpanzees. Reyes-Illg Joey Report, 18.

93. The governmental report on psychological well-being of nonhuman primates recommends that environmental enrichment elements fulfill one or more of the following criteria: promote foraging, including “processing” of raw vegetables and fruits; promote manipulation; allow animals to control aspects of the environment; promote other species-typical activity, including locomotion; reduce self-injurious behavior, encourage learning of novel responses for desired reward, and provide varied sensory stimuli (e.g., texture, density, shape, size, color, taste, and smell). Nat’l Research Council, *supra*, at 29.

94. Because of its importance, environmental enrichment is one of the aspects of chimpanzee care that must be routinely reviewed by a veterinarian under the AWA. 9 C.F.R. § 3.81.

95. When chimpanzees are kept under inadequate environmental conditions, they are subject to psychological harms including suffering from boredom, developing stereotypies and/or self-injurious behaviors, and becoming increasingly aggressive. Reyes-Illg Joey Report, 19.

**Joey's Inadequate Program of Environmental Enrichment and  
Failure to Meet Joey's Basic Psychological Needs**

96. During the time Joey was at MPF, the manner in which Joey was held failed to meet his basic psychological needs. Factual Inference No. 26.

97. Presently, the manner in which Joey is being held fails to meet his basic psychological needs. Factual Inference No. 28.

98. Enrichment at MPF fell far below the required minimum standards, as it did not adequately address novelty, variety, and a diversity of categories of enrichment. Jensvold Joey Report, 20.

99. Other than two small blankets, Joey did not have any nest-building materials at MPF, which, together with the lack of sufficient vertical height, may prevent him from getting restful sleep. Reyes-Illg Joey Report, 24-25.

100. Joey's enclosure at MPF lacked not just the litter (cage substrate) to which he is reportedly allergic, but substrate at all, leaving only a hard, barren floor with no opportunities for activities like digging or foraging for food. Reyes-Illg Joey Report, 24-25.

101. At MPF, Joey did not receive adequate environmental enrichment. Factual Inference No. 17.

102. While at MPF, Joey lacked a meaningful program of environmental enrichment. Among other things, he did not have an adequate opportunity to engage in problem solving with appropriate objects in his enclosure. Jensvold Joey Report, 19.

103. Joey's space at MPF contained just two barrels, a large red plastic object, a black rubber object which appears to be a broken ball, two small blankets, and a piece of tupperware. Goodman Decl., Exs. G (PETA-00846), H (PETA-00699, 700, 739, 741), I (PETA-00816-17), J (PETA-00865-868, 880, 884), E (CASEY-00066).

104. Presently, the manner in which Joey is being held fails to meet his basic needs for enrichment. Factual Inference No. 19

105. Joey is not provided with an adequately enriched environment. Factual Inference No. 21.

106. Casey's sporadic attempts to provide some type of enrichment to the chimpanzees at MPF fail to satisfy standards for what constitutes an appropriate and enriching environment, including the AWA, GFAS Great Ape Standards, AZA Chimpanzee Care Manual, and the Guide to Care and Use of Laboratory Animals, and multiple recommendations in authoritative reference texts. Reyes-Illg Joey Report, 22.

107. In videos of Joey at MPF, he appears minimally engaged with most of the ostensible enrichment items in his enclosure. Reyes-Illg Joey Report, 24-25.

108. Casey's "budget breakdown" for the chimpanzees at MPF does not include any funds for enrichment but relies exclusively on donated items. Casey's Amended Objections and Answers to First Interrogatories, at 7-8.

109. The "Enrichment Log" kept by Casey from 2012-2016, which has only sporadic entries (often only 2 to 3 per month) indicates that enrichment objects are infrequently provided. Reyes-Illg Joey Report, 25; Goodman Decl., Ex. D (CASEY-00008-63).

110. Many of the entries in the "Enrichment Log" center on provisioning the chimpanzees with *inappropriate* food items—and the evidence indicates that because of his reported allergies, Joey did not even receive these. Reyes-Illg Joey Report, 25.

111. The MPF enrichment documents, together with Casey's deposition testimony, indicate that Casey's understanding of the purpose and specific objectives of providing enrichment is limited. Reyes-Illg Joey Report, 27.

112. There appears to be little to no effort at MPF to encourage species-typical behavior, promote physical activity, provide different types of enrichment, offer opportunities for positive reinforcement training, or assess the effect of specific enrichment elements over time. Reyes-Illg Joey Report, 27.

### **The Harm to Joey Caused By Inadequate Enrichment**

113. The failure to provide Joey with adequate enrichment is likely to cause Joey harm by failing to provide the mental stimulation required for this cognitively complex species. Ross Joey Report, 21.

114. The failure to provide Joey with adequate enrichment also creates the likelihood of harm by significantly disrupting Joey's normal behavioral repertoire, thereby depriving him of the opportunity to be cognitively challenged and engaged. Ross Joey Report, p 21.

115. The lack of an appropriate environment and adequate enrichment has caused harm to, and continues to harm, Joey's psychological and physical well-being. Reyes-Illg Joey Report, 27.

116. By all standard measures, Joey lived in a deprived environment, thus triggering the detrimental effects of a deprived environment. Jensvold Joey Report, 20.

117. Similar to a neglected child, Joey likely developed cognitive deficits by spending his formative years in a mostly barren and unstimulating environment. Jensvold Joey Report, 19.

118. The deleterious effects of Joey's unstimulating environment were further compounded by the fact that MPF was inadequately staffed, so that human caregivers would have been unable to even attempt to compensate, at least partially, for Joey's inadequate social and physical environment. Jensvold Joey Report, 19.



119. Joey's lack of species-typical behaviors, coupled with his apparent desperation for human contact, suggest poor psychological well-being while he was held at MPF that will only worsen in his current location until these conditions are remedied. Reyes-IIIg Joey Report, 27.

120. The failure to provide Joey with an appropriate and enriching environment has harmed him and subjects him to a continuing likelihood of injury. Reyes-IIIg Joey Report, Opinion 2.

121. Because Sawyer's acquiescence to the manner in which Joey was kept at MPF indicates that he also is uninformed about Joey's basic needs and how to meet them, if Joey is not removed to a suitable accredited sanctuary, where he would be provided with an appropriate program of environmental enrichment, the harm to Joey is likely to continue. Jensvold Joey Report, 20.

### **Chimpanzees' Need to Engage in Species-Typical Behavior**

122. A marker of (and requirement for) wellbeing in chimpanzees is the manifesting of species-typical behaviors, i.e., behaviors that chimpanzees engage in while in their natural environment. Jensvold Joey Report, 23.

123. Foraging "is an essential species-typical behavior." Supplemental Responses to Counterclaim Plaintiffs' First Requests for Admission to Counterclaim Defendant Connie Braun Casey, No. 15.

124. Nest-building "is an essential species-typical behavior." *Id.* No. 16.

125. Climbing "is an essential species-typical behavior." *Id.* No. 17.

126. Brachiating "is an essential species-typical behavior." *Id.* No. 18.

127. Playing "is an essential species-typical behavior." *Id.* No. 19.

128. Tool use "is an essential species-typical behavior." *Id.* No. 20.

129. Socializing “is an essential species-typical behavior.” *Id.* No. 21.

130. When a chimpanzee is in a deprived environment with no social partner and no meaningful enrichment, species-typical behaviors become less frequent and are replaced by stereotypies and other abnormal, often harmful, behaviors. Jensvold Joey Report, 24.

131. Stereotypies and other abnormal behaviors are indicative of poor animal welfare. Jensvold Joey Report, 24.

132. Stereotypic and other abnormal behaviors also are indicators of stress. Jensvold Joey Report, 24.

### **Joey’s Species-Typical Behavior Patterns Were and Are Impaired**

133. During the time Joey was at MPF, the manner in which Joey was held failed to meet his basic behavioral needs. Factual Inference No. 30.

134. Presently, the manner in which Joey is being held fails to meet his basic behavioral needs. Factual Inference No. 32.

135. During the time Joey was confined at MPF, Joey was confined in a manner that significantly impaired his normal behavior patterns. Factual Inference No. 34.

136. Presently Joey is confined in a manner that significantly impairs his normal behavior patterns. Factual Inference No. 35.

137. Joey’s inability to engage in species-typical behaviors is not an acceptable level of care for a chimpanzee in any setting. Jensvold Joey Report, 25.

### **Chimpanzees’ Need for an Adequate Program of Veterinary Care**

138. Health is foundational to good welfare, including both physical and psychological well-being. Illness and injuries often cause suffering, such as pain, nausea, weakness, depressed mood, inappetence, and exhaustion. Reyes-Illg Joey Report, 38.

139. Proper veterinary care is essential to ensuring the well-being of animals in captivity, as well as preventing their untimely deaths. Reyes-Illg Joey Report, 38; *see also* Ross Joey Report, 30.

140. Unless a facility has a full time veterinarian on the premises, it is the responsibility of the staff to ensure that the primates' basic veterinary care needs are met in a timely and appropriate manner. Jensvold Joey Report, 31.

141. It is not acceptable for caregivers to wait until an animal is already in extreme distress to obtain a diagnosis and treatment. This is particularly important given the well-recognized propensity of primates to hide their more obvious symptoms of injuries and disease. Jensvold Joey Report, 31; *see also* Casey Dep. at 128:10-14.

142. Among other things, staff needs to ensure that a veterinarian with sufficient expertise is retained to design and oversee a program of preventive care and routine wellness care. Jensvold Joey Report, 31.

143. Preventive care is especially important for chimpanzees because (1) chimpanzees require anesthesia to safely perform a full examination and diagnostics, so it is best not to wait until the animal is in critical condition, and (2) they are closely related to humans, so there is a high risk of transmission of diseases. Reyes-Illg Joey Report, 38.

144. Preventive care is legally mandated for chimpanzees. 9 C.F.R. § 2.40(b)(2).

145. When there is no daily veterinary presence at a facility, it is essential that caregivers be knowledgeable and very observant, so that the first signs of illness are detected and a veterinary consultation can be arranged promptly. Reyes-Illg Joey Report, 39.

146. It is important that caregivers have a clear understanding of what constitutes an emergency, and err on the side of seeking immediate evaluation by a veterinarian if they are unsure. Reyes-Illego Joey Report, 39.

147. All published standards require a written veterinary care program for captive chimpanzees, overseen by a veterinarian experienced with the species. Reyes-Illego Joey Report, 45.

148. In addition to standard health care needs common to all captive chimpanzees, Joey requires additional care, because he reportedly had (and has) special needs due to a history of seizures and severe—potentially fatal—allergies. This makes it even more imperative that Joey have an effective program of veterinary care. Jensvold Joey Report, 32; Reyes-Illego Joey Report, 45-46.

149. At a minimum, Joey should have received, and continue to receive, regular visual checks and monitoring by a veterinarian, fecal exams, and a plan for prevention or treatment of seizures should be developed. Without such minimum veterinary care, Joey is at risk of suffering illness, injury, and even death. Jensvold Joey Report, 32; Reyes-Illego Joey Report, 47.

### **Joey Received No Veterinary Care**

150. During the time Joey was at MPF, he was not provided with appropriate veterinary care. Factual Inference No. 44.

151. Dr. Pernikoff, who Casey purports was the attending veterinarian at the facility, testified that he was not Joey's veterinarian and was never asked to and never provided *any* veterinary care to Joey. Pernikoff Dep. 49:11-50:14.

152. Joey supposedly had severe allergic reactions. Casey Dep. 229:23-24, 232:14-20.

153. Casey testified that Joey supposedly was at risk for seizures, but she did not know the risk factors for the seizures and never consulted with Dr. Pernikoff about how to prevent them or what should be done if they occur. Casey Dep. 232:2-13.

154. The initial symptoms that led to Joey's supposed food allergy diagnosis could have other causes which, if not diagnosed, are likely to be neglected and to worsen. Reyes-IIIg Joey Report, 45.

155. Potential causes of Joey's symptoms include infectious, parasitic, foreign body in the gastrointestinal tract, inflammatory bowel disease, endocrine disease (e.g., Addison's disease), pancreatic or liver disease, or neoplasia. Reyes-IIIg Joey Report, 45.

156. Joey also reportedly has a seizure disorder. Reyes-IIIg Joey Report, 46.

157. A captive chimpanzee with a seizure disorder should absolutely be under the care of a veterinarian and should have an experienced primate veterinarian in the vicinity who can attend to him promptly in case of an emergency. Reyes-IIIg Joey Report, 46.

158. Records from Dr. Pernikoff indicate that Joey was "never managed medically." Goodman Decl., Ex. T (PERNIKOFF-00001-2).

159. Currently, Joey is still not provided with preventative or other appropriate veterinary care. Factual Inference Nos. 46, 48.

### **The Harm Caused to Joey by Inadequate Veterinary Care**

160. The failure to provide Joey with adequate veterinary care has subjected Joey, and continues to subject Joey, to a likelihood of injury and likely has already actually injured him. Reyes-IIIg Joey Report, Opinion 5.

161. The failure to provide appropriate veterinary care to Joey is very likely to cause harm to Joey in the future and likely already has. Reyes-Illg Joey Report, 45; Ross Joey Report, 29-30, 34-35.

162. Since Joey does not receive any veterinary care, including preventive care, illnesses will not be identified in their early stages where they are more treatable—if at all. Reyes-Illg Joey Report, 47.

163. The potential negative consequences of the absence of any health records for Joey is exacerbated in Joey's case, since he was moving between various locations and caregivers, increasing the likelihood that Joey might experience exposure to an allergen. Jensvold Joey Report, 33.

164. With no written information about how to treat Joey's seizures, no existing veterinary records, and no program of veterinary care, Joey is likely to suffer harm or death. Jensvold Joey Report, 33.

165. Since at present, there is no existing veterinary-client-patient relationship for Mr. Sawyer to rely upon in the event that Joey has a medical emergency, it is unclear how he can arrange for emergency care for Joey. Reyes-Illg Joey Report, 47.

166. It can be very difficult to find a veterinarian who is able, willing, and sufficiently knowledgeable and equipped to provide veterinary care to a chimpanzee. Reyes-Illg Joey Report, 47.

167. There is a very high likelihood of Joey sustaining an illness or injury, including a life-threatening one, and there is no program to prevent it or appropriately treat it. Reyes-Illg Joey Report, 47.

168. Failure to provide preventive or reactive veterinary care falls below all generally accepted standards and can cause injury to and even result in the death of chimpanzees. Reyes-Illg Joey Report, 47; Pernikoff Dep. 192:24-25, 193:1-9, 193:16-24, 206:16-25.

### **Chimpanzees' Needs Relating to Sanitation**

169. A key part of ensuring physical and psychological well-being is proper sanitation, where sanitation encompasses both cleaning (removing excessive amounts of dirt and debris) and disinfection (removing unacceptable concentrations of microorganism). Reyes-Illg Joey Report, 27 (citing Nat'l Research Council, *supra*, at 38).

170. High quality sanitation is recognized as an essential component to preventing health problems in chimpanzees. Reyes-Illg Joey Report, 27.

171. Chimpanzee enclosures should be cleaned daily with detergents and/or disinfected with suitable products, such as phenolic disinfectant, sodium hypochlorite, or a quaternary ammonium disinfectant. Jensvold Joey Report, 29.

172. Poor sanitation increases the likelihood of disease, parasites, and pests, such as infestations by rodents and insects, who are also carriers of disease. Jensvold Joey Report, 29.

173. In addition to being a strong and unpleasant odor, ammonia caused by build-up of urine is very irritating to the mucous membranes of the body, specifically the eyes, nose, and throat, and is believed to be a trigger for bronchospasm and other lower respiratory tract dysfunction; because it damages the lungs' defense mechanisms, it may lead to increased susceptibility to respiratory infections and asthma attacks. Reyes-Illg Joey Report, 28.

174. Build-up of urine and stool increases the risk of illness spread by rodents or insects who are attracted to this build-up of organic debris. Reyes-Illg Joey Report, 28.

175. Increased parasite load brought about by build-up of urine and stool can cause gastrointestinal disease and death. Reyes-Illg Joey Report, 28.

176. The likelihood that a chimpanzee who is kept in unsanitary conditions will get sick or even die is compounded when the animal is not routinely screened for parasites, given no vaccines, and lacks any program of preventive veterinary care. Jensvold Joey Report, 29.

177. An important component of maintaining a safe and healthy environment is developing and adhering to specific, written protocols for cleaning chimpanzee enclosures. Reyes-Illg Joey Report, 29.

178. Cleanliness, such as removing trash, debris, and junk and keeping trash stored in cans with tight-fitting lids, is necessary to minimize risk of disease transmission. Reyes-Illg Joey Report, 30.

179. Chimpanzees are highly susceptible to human diseases. Reyes-Illg Joey Report, 30.

180. Hand-washing is extremely important in preventing spread of illness between humans and chimpanzees. Reyes-Illg Joey Report, 31.

181. Without protective measures such as hand-washing and wearing gloves during food preparation, chimpanzees are likely to be exposed to pathogens carried by the human preparing the food or by pathogens present on the food at time of purchase or donation. Reyes-Illg Joey Report, 30.

### **Joey's Unsanitary Conditions of Confinement**

182. During the time Joey was at MPF, the conditions in which Joey was held were unsanitary. Factual Inference No. 36; Goodman Decl., Ex. A (PETA-00090, 104).

183. Currently, Joey remains held in unsanitary conditions. Factual Inference No. 38.



184. Joey's environment at MPF was unsanitary in numerous ways, which are each associated with potential harm to his psychological and physical well-being. Reyes-Illg Joey Report, 27-28.

185. The unsanitary conditions at MPF (including during the period of time while Joey was housed there) have been repeatedly documented by USDA inspectors. Goodman Decl., Exs. A (PETA-00001-2, 5-6, 56, 62, 68, 73, 90, 104, 110, 112, 121, 122), B (PETA-00073).

186. Among other things, conditions at MPF, cited by USDA inspectors during the period of time Joey was housed there, violated the AWA requirement that food waste must be removed "daily and ... as often as necessary to prevent an excessive accumulation of feces and food waste, to prevent the nonhuman primates from becoming soiled, and to reduce disease hazards, insects, pests, and odors." 9 C.F.R. § 3.84(a).

187. Both roaches and flies can spread diseases, and both were noted in USDA inspection reports on multiple occasions. Goodman Decl., Ex. A (PETA-00091, 93-95, 123 (roaches), and PETA-0090, 91, 108 (flies)).

188. USDA inspectors also documented build-up of urine and stool at MPF, and one report noted a strong ammonia odor "that irritated the nasal passages of the inspectors." Goodman Decl., Exs. A (PETA-00071, 111, 112-113, 119-20), B (PETA-00073), G (PETA-00847), L (PETA-01984).

189. There is evidence of rodent infestation in the USDA inspection reports. Goodman Decl., Ex. A (PETA-00008, 11, 25, 28, 45, 46).

190. [REDACTED]

191. MPF lacks cleaning and sanitation protocols. Reyes-Illg Joey Report, 29.

192. Numerous USDA inspection reports point to the build-up of trash, junk, debris, and old food in the area surrounding the animal enclosures at MPF. Goodman Decl., Exs. A (PETA-00007, 9, 22-28, 34, 35, 47, 54, 67-70, 90, 96-97, 104, 121), B (PETA-00073).

### **Harm Caused to Joey By Unsanitary Conditions**

193. The failure to provide Joey with a safe and sanitary environment has subjected Joey, and continues to subject Joey, to a likelihood of injury. Reyes-IIIg Joey Report, Opinion 3.

194. This lack of a proper sanitization at MPF likely creates a risk of harm to Joey's health. Jensvold Joey Report, 29.

195. Food waste build-up can lead to skin irritation due to prolonged contact, potentially causing infected wounds; irritation of the respiratory tract from the emitted fumes; increased risk of illness spread by rodents or insects; providing a medium for infectious organisms to grow, increasing likelihood of disease; and worsening physical inactivity, as chimpanzees are likely to try to avoid stepping in rotting food. Reyes-IIIg Joey Report, 28.

196. Rodents and their feces and urine can introduce a host of viral and bacterial diseases to nonhuman primates, including chimpanzees, most of which can be fatal if not diagnosed and treated promptly. Reyes-IIIg Joey Report, 29.

197. Viruses that are spread via rodent dropping include: hantavirus, encephalomyocarditis virus and lymphocytic choriomeningitis virus. Reyes-IIIg Joey Report, 29.

198. Bacterial diseases that can be spread via rodent droppings include: leptospirosis, yersiniosis, salmonellosis, tularemia, and rat bite fever. Reyes-IIIg Joey Report, 29.

199. The longer Joey is in an unsanitary or unsafe environment, the greater likelihood of injury. Reyes-IIIg Joey Report, 34.

200. Joey is at risk of physical injury, i.e., infectious and parasitic disease, allergic/irritant respiratory disease, food-borne illness, physical injury, and death. Reyes-IIIg Joey Report, 34.

201. The presence of excessive waste inhibits chimpanzee activity, which exacerbates the frustration of Joey's natural behaviors due to inadequate space, structures, and enrichment. Reyes-IIIg Joey Report, 34.

202. Since Sawyer failed to remove Joey from these harmful conditions until Plaintiffs sent their Notice to obtain Joey's removal to an accredited sanctuary, it must be inferred that Sawyer either did not care about, or was uninformed of, the obvious risks of harm to Joey from the conditions under which he was being kept for years. Jensvold Joey Report, 29-30.

203. Sawyer's lack of knowledge and/or care further underscores the risk to Joey if Joey were permitted to remain under Sawyer's unqualified care. Jensvold Joey Report, 29-30.

### **The Dietary Needs of Chimpanzees**

204. A nutritionally balanced diet is essential to preserving and promoting physical health of captive chimpanzees. Reyes-IIIg Joey Report, 34.

205. A captive chimpanzee's general diet plan must continually be evaluated in light of the health of individual chimpanzees and new developments in the field of nutrition science. Reyes-IIIg Joey Report, 36.

206. Because numerous health problems can be caused by or prevented by diet, virtually all published standards emphasize the importance of providing an appropriate diet, in an appropriate manner, under the supervision of a veterinarian, nutritionist, or other qualified individual. Reyes-IIIg Joey Report, 37.

207. The diet of captive chimpanzees also plays an essential role in providing opportunities to engage in natural behaviors, such as foraging, problem solving, and manipulation of food items, and is therefore considered critical enrichment and key to ensuring their psychological well-being. Reyes-Illg Joey Report, 36.

208. The appropriate presentation of food items is therefore important to captive chimpanzees' psychological health, in terms of their ability to engage in natural behavioral patterns. Reyes-Illg Joey Report, 34.

### **Joey's Inadequate Dietary Regime**

209. While Joey was boarded at MPF, Joey's food was provided exclusively by Sawyer, according to Casey. Goodman Decl., Ex. H (PETA-00699 ("they bring a two-week supply, because he only has produce that is grown in the United States, and has special oatmeal.")).

210. Joey was not and is not provided with a wholesome and nutritious diet. Factual Inference Nos. 40, 42.

211. Dr. Pernikoff, the purported attending veterinarian at MPF, never provided any dietary or nutritional advice for Joey. Pernikoff Dep. 49:11-50:14.

212. Joey's diet was presented to him in an inadequate manner. Reyes-Illg Joey Report, 36.

213. Joey was apparently provided unreliable access to clean drinking water at MPF. Reyes-Illg Joey Report, 36-37.

214. In one video, Casey and another individual can be seen discussing Joey actively urinating in his water and the fact that the water was contaminated on the previous day with feces. Goodman Decl., Ex. I (PETA-00817).

215. Joey's diet, and the manner in which the diet and water were provided to him, do not comport with generally accepted practices. Reyes-Illg Joey Report, 37.

### **Harm Caused to Joey by Improper Dietary Regime**

216. Contaminated drinking water can lead to severe gastroenteritis, excessive intestinal parasite load, and refusal to drink. Lack of water can lead to dehydration, kidney injury, and—if prolonged—death. Reyes-Illg Joey Report, 37.

217. The diet that Joey was provided, and the manner in which it was provided, likely injured him both physically and psychologically. Reyes-Illg Joey Report, 34.

218. The way that water was provided at MPF creates the risk of contamination with feces, urine, mildew or other materials that could be harmful to their health. Reyes-Illg Joey Report, 37.

219. Joey has likely already been injured by his inadequate diet and nutrition, and is likely to be harmed in the future if the food items and manner in which he is fed continues. Reyes-Illg Joey Report, 38.

220. The longer Joey is maintained on an inadequate diet, the more severe the harm is likely to become. Reyes-Illg Joey Report, 38.

221. Joey is likely to experience (and may already have experienced) physical injury due to nutrient imbalances leading to an increased risk of diabetes, cardiovascular disease, obesity, metabolic bone disease, and periodontal disease. Reyes-Illg Joey Report, 38.

222. The dental disease resulting from an inadequate diet combined with lack of veterinary care can lead to substantial pain, potentially severe enough to interrupt eating, and can lead to spread of infection to other parts of the body. Reyes-Illg Joey Report, 38.

### **Summary of Conclusions Pertaining to Joey**

223. If Joey's present conditions continue unabated, he will likely suffer future physical and psychological harm. Factual Inference No. 49.

224. At MPF and currently, Joey's care is severely deficient. Reyes-Illg Joey Report, 48.

225. At MPF, Joey was kept largely or exclusively in solitary housing, where he was deprived of vital social companionship and physical contact with other chimpanzees. Reyes-Illg Joey Report, 48.

226. The lack of any reasonably dynamic and enriching space in which to live was likely to impart harms to Joey both in the proximate sense as well as increasing the likelihood of long-term detrimental impacts. Ross Joey Report, 36.

227. Spaces such as those to which Joey was confined were restrictive and did not allow for the adequate expression of species-typical locomotion, exploration, and ability for choice and control. Ross Joey Report, 36.

228. Joey's physical environment at MPF was small, barren, and lacked outdoor access; the minimal environmental enrichment provided was inadequate to satisfy the complex cognitive needs of a chimpanzee. Reyes-Illg Joey Report, 48.

229. The conditions under which Joey was kept at MPF have led, and are leading to psychological and potentially physical injury. Reyes-Illg Joey Report, 48.

230. Joey is likely to suffer lifelong psychological damage as a result of being subject to inappropriate conditions during a key developmental period. Reyes-Illg Joey Report, 48.

231. During the entire time he was at MPF, in spite of a reported history of seizures, Joey never received any veterinarian evaluation or any sort of preventive veterinary care, such as

vaccinations, deworming, or dental care. We can infer that each of these conditions persists.  
Reyes-Illg Joey Report, 48.

232. The lack of an appropriate program of veterinary care amplifies the negative social and physical environments to which Joey was subjected while living at MPF, thereby compounding the likelihood of harm. Ross Joey Report, 36.

233. The failures to meet Joey's very basic needs fall far short of the accepted standards for chimpanzee care and have likely subjected Joey to physical and psychological injury, and that harm will only be exacerbated as these failures persist in his current environment. Reyes-Illg Joey Report, 48.

234. Even if Joey had not yet suffered harm, he will likely experience harm in the future if his inadequate conditions persist unabated. Among other things, as Joey develops into an adult, his abnormal behaviors will likely increase and his deficits (including his inability to socialize) become more acute. Jensvold Joey Report, 39.

235. The longer Joey is kept apart from an appropriate social group and physically and mentally stimulating environment, the worse his psychological and physiological deterioration will become. Jensvold Joey Report, 39.

236. Since Sawyer obviously lacks either the understanding and/or means to protect Joey from harm, it would be in the best interest of Joey to be placed in an accredited sanctuary. Jensvold Joey Report, 39.

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Respectfully submitted,

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## CERTIFICATE OF SERVICE

I certify that on March 18, 2019, the foregoing Counterclaim Plaintiffs' Statement of Uncontroverted Material Facts in Support of Motion for Summary Judgment Against Counterclaim Defendant Andrew Sawyer was (1) electronically filed under seal with the Clerk of the Court using the CM/ECF system, (2) was served by electronic email to the following, and (3) a redacted copy was filed using the CM/ECF system, by which notification of such filing was electronically sent and served to the following:

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